Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-30 of copending Application No. 10/475,157. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to a system for detecting a target substance using a pyroelectric film in an isolated environment.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-10 and 12-16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cacioli et al. (US 2002/0011934) or Klinger (USP 5,976,881).

Cacioli et al. teach a glove(10) comprising a piezoelectric breach indicator. The glove(10) defines a barrier(11) and breaching the barrier(11) is signaled by sensor(16) which sends the appropriate signal to chip(15) which issues an alarm or other breach notification. Paragraph[0019] teaches the signal can be a result of changes in pressure or a chemical characteristics which has been read as teaching a reagent that monitors changes in chemical characteristics.

The claimed *"protective environment"* has been read on the taught **--barrier--**, the claimed *"detector"* has been read on the taught **–sensor(16)--** and the teachings of paragraph[019] have been read on the claimed *"reagent".*

Klingner teach a glove(10), a barrier layer(28) and three break through detectors(20,30,40). Breakthrough detector(20) comprises a reaction pad(21) which carrier colorimetric reagent that will colorimetrically react with the analyte of interest.

The claimed *"protective environment"* has been read on the taught **–barrier(28)--** , the claimed *"detector"* has been read on the taught **–detectors(20,30,40)--** and detector(20) has been read on the claimed *"reagent".*

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hermes et al. (USP 5,734,323).

Hermes et al. teach a puncture detection material that is used in conjunction with containment bags, containment liners, covers, containers, gloves, aprons, boots, pants, smocks, face shields, etc. (see column 11 lines 26-36). Column 8 lines 45-56 teach real time detection of a breach is detected and enables the user to take the appropriate action.

Claims 1-16 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Loomis et al. (US 2004/0141879).

Loomis et al. teach a system for measurement of a target substance using a pyroelectric film transducer and one more reagents. Carrier(40) comprises a plurality of colorimetrically reactive reagents(32) deposited on a pyroelectric film transducer(42). The transducer(42) has a top surface(36), a bottom surface(38) and the reagents are in a sealed tunnel(34).

The claimed *"protective environment"* has been read on the taught **–sealed tunnel(34)--** , the claimed *"detector"* has been read on the taught **–transducer(42)—**and the claimed *"reagent"* have been read on the taught **–reagents(32)--.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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